

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO No. 493 of 2003.

Judgement reserved on: 1.10.2007

Date of decision: 13.11.2007

Beli Ram Thakur

..... Appellant.

Vs.

Sandip Thakur & ors.

.... Respondents.

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting? No

For the Appellant : Mr.Vinay Kuthiala, Advocate

For the Respondents : Mr. V.S.Chauhan, Advocate, for respondent No.3.

Kuldip Singh, Judge.

This appeal has been filed by claimant Bali Ram Thakur for enhancement of compensation against award dated 31.7.2003 passed by learned Motor Accident Claims Tribunal, Kinnaur, Civil Division at Rampur Bushahr in MAC case No. 25/02.

2. The facts in brief are that appellant- claimant was travelling in maruti car No. HP 35-0069 from Anni to Namhong and the car met with an accident at place Gugri Khud near Amar Bag on 24.1.2002 at about 6 p.m. due to rash and negligent driving of respondent No.2 driver of the car and to this effect an FIR No. 8 of 2002 was registered on 24.1.2002 at Police Station, Anni. The appellant was 51 years of age at the time of accident

Whether the reporters of the local papers may be allowed to see the Judgment? Yes

and was an Advocate and earning Rs. 15,000/- per month from profession, Rs. 3,00,000/- from horticulture and agriculture per annum. The car at the time of accident was owned by respondent No.1 and insured with respondent No.3. The appellant got treatment in various hospitals and incurred more than Rs. 50,000/- on medicines, medical tests etc. The appellant filed claim petition on 10.5.2002 and claimed Rs. 64,30,700/- compensation from respondents alongwith future interest at the rate of 18% per annum.

3. Respondents No. 1, 2 contested the petition by filing reply. They have not denied the accident, injuries and the treatment, but they denied amount of expenses incurred by the petitioner on his treatment. They have also denied their liability to pay the compensation. According to them, the vehicle involved in the accident was insured with respondent No.3 and liability, if any, is of respondent No.3 to pay the compensation. They have however submitted that the amount claimed by the petitioner is excessive. They also denied rash and negligent driving on the part of respondent No.2. The cause of accident according to them is sudden locking of steering of the car.

4. Respondent NO.3 filed separate reply and took preliminary objections of maintainability, the car was being driven in violation of terms of the policy. There were five persons in the car including the driver more than the sitting capacity of the car. The driver who was driving the car was not possessing registration cum fitness certificate, route permit, valid and effective driving licence at the time of accident. On merits, respondent No.3 contested the claim of the petitioner. It has also been submitted that the amount claimed is highly exaggerated. The learned Tribunal allowed

the petition on 31.7.2003 and awarded Rs. 10,00,000/- compensation to the appellant. As noticed above the claimant has filed the above appeal for enhancement of compensation.

5. I have heard the learned counsel for the parties and gone through the record. The learned counsel for the appellant has submitted that the appellant is entitled to enhancement of the compensation as claimed by him in the claim petition. The learned Tribunal has awarded less compensation to the appellant. It is very difficult to prove each and every item of claim under known heads. No doubt, the compensation is to be awarded in the facts and circumstances of the case, but to some extent compensation is to be assessed even on guess work keeping in view the hard realities of life. He has submitted that no interest has been awarded by the learned Tribunal and therefore, on the amount of compensation the claimant is entitled to interest at such rate as this Court deems just and proper from the date of filing of petition. The learned counsel for the insurer has submitted that the claimant has failed to prove his case. There is no legal evidence on record to support the claim of the claimant. The learned Tribunal has already awarded compensation to the claimant on the higher side and therefore, the claimant is not entitled to any further enhancement of the compensation.

6. The learned Tribunal held that respondent No.2 was negligent in driving the car and the accident took place due to rash and negligent driving on the part of respondent No.2 driver and appellant sustained injuries in the accident. The car was insured with respondent No.3, therefore, learned Tribunal while awarding compensation of Rs. 10,00,000/- directed respondent No.3 to deposit the award amount. The

respondents have not assailed the impugned award, only appellant has filed appeal for enhancement. Therefore, only question involved in the appeal is the quantum of compensation.

7. The claimant has appeared as PW-1 and has stated that he had been practicing as advocate in different branches of law since 1979 in the Courts at Anni, Rampur and Shimla. He remained President of Anni Bar Association several times. He remained Director, Kangra Central Co-operative Bank and member of Small Saving Board H.P. He is an income tax assessee with Permanent Account No.ABTPT-6166 E. He has one son and daughter, his father had 50 bighas of land, which he had given to his grand children through Will, his father died in the year 1986. He was managing the property left by his father. There is an apple orchard on the land left by his father. He was earning Rs.4-5 lacs per annum from the orchard after excluding the expenses. The Car No.HP-35-0069 rolled down 100 feet below the road on 24.1.2002 near Amar Bag at 6 p.m. due to rash and negligent driving of respondent No.2. He sustained injuries in the accident and was treated at Indira Gandhi Medical College, Shimla, PGI, Chandigarh, Govt. Medical College and Hospital, Chandigarh, he has spent about Rs.50,000/- on treatment and medicines. The vouchers of the medicines are Ex.P-1 to Ex.P-48. The bills of the taxi are Ex.P49 to Ex.P-51. In addition to this he travelled in the vehicles of relations and spent Rs.10,000/- on petrol. He has suffered injury in the back bone. He can not work and he has kept two persons as attendants on payment of Rs.3,000/- per month. After discharge from hospital he stayed for two months at Chandigarh in private accommodation on payment of Rs.6,000/- per month rent. On the advise of doctor in September, 2002 he went to Safdarganj

Hospital, Delhi and joined re-habilitation course for one month. He has spent Rs.50,000/- on fowler's bed, Rs.50,000/- on Electric Wheel Chair, Rs.8,000/- on Air inflated bed, Rs.10,000/- on Bed sore dressing and Rs.20,000/- on catheterisation charges. He had to undergo physiotherapy. He developed two bed sores which healed but now another bed sore is developing and for this purpose daily dressing is required. He is required to change catheter every week and drain out the bladder. Due to accident his profession as an advocate has totally finished. He is not in a position to look after the home affairs. He has suffered mental and physical injuries due to accident. He regained consciousness in the hospital after 5 days of the accident. He could not sit in the bed about 5-6 months and even now he could not sit for long time. The two attendants are serving him turn by turn, his married life has totally finished as his lower portion is paraplegic. He could not look after his children. He remains under constant pain and suffering. He has kept one servant to look after orchard on salary of Rs.3,000/- per month. He requires trained nurse for catheterisation and draining out bladder. He has suffered 100% disability . He was spending Rs.80,000/- annually on the education of his son and Rs.40,000/- on the education of his daughter. He was earning Rs.15,000/- from profession. In the cross-examination on behalf of respondents No.1 and 2, he has stated that he has not kept record of his professional income.

8. PW 2 Naresh Kumar has stated that he is serving the petitioner for the last eight months. Pankaj is the other person who has been engaged for serving the petitioner. The petitioner is paying Rs. 3000/- per month to him in addition to food. In cross examination he

has stated that sometimes he pays him in cash and sometimes through cheques. PW 3 T.S.Khachi, Advocate has stated that he is member of Anni Bar Association since 1996. Petitioner is senior to him in profession and he remained President of the Bar. The petitioner is totally handicapped due to road accident and he is dependant on others. Two persons are required to put the petitioner on wheel chair. The petitioner was earning Rs. 15000/- to Rs. 20000/- per month from profession. He is on visiting terms to the petitioner. The petitioner has orchards at three places.

9. The statement of PW 4 Raj Bahadur was recorded on commission and he has stated that he is posted as Head of Department of Orthopedics and Medical Superintendent, Government Medical College and Hospital, Sector 32, Chandigarh. Beli Ram Thakur remained under his treatment as a case of fracture dislocation D 11-12 vertebrae and was operated upon by him on 16.2.2002. He was found temporally physically disabled 100% with respect to body. A copy of disability certificate of the petitioner is Ex. PW 4/A. The case is of complete paraplegia having 100% disability. In cross examination on behalf of respondent No.3, he has stated that as per disability certificate the patient was advised for reassessment of disability after six months of the issuance of certificate. He denied that disability of the petitioner will be reduced with the passage of time.

10. The counsel for the petitioner has tendered in evidence sale proceeds Ex. P-52 to Ex. P-63, bills Ex. P-64 and Ex. P-65, copy of plan Ex. P-66, discharge summary Safdarganj Hospital, Delhi Ex. P-67. The counsel for respondents has tendered in evidence Ex. RA copy of RC, Ex. RB copy of insurance policy and Ex. RC copy of driving licence.

11. RW 1 Hem Raj, MHC, Police Station, Anni, RW 2 Jagdish Chander Negi, Development Officer, National Insurance Company Branch Office, Tapri, RW 3 Partap Singh Constable have deposed regarding the accident and their statements are not relevant for purposes of assessing the compensation. This is the entire evidence led by the parties before the Tribunal.

12. The appellant was permitted to lead additional evidence in the appeal and accordingly Dr. Prem Thakur has appeared as AW-1. He has stated that he was member of Medical Board who examined Beli Ram Thakur . The certificate Ex.PA was issued by the Board which was signed by him as member of the board. The certificate Ex.PA was issued by the Board after examination of Beli Ram Thakur. In cross-examination he has denied that disability mentioned in certificate Ex.PA is curable, he rather voluntarily stated that it was permanent. No evidence in rebuttal was produced.

13. The learned counsel for the appellant has relied ***Bhagwan Dass versus State of H.P. and others (1994 (2) Sim. L.C. 202)*** in support of his submissions that the amount of compensation in personal injury cases is higher than in fatal cases. In injury cases claimant himself utilizes the compensation amount and it is he who has to suffer the impact of the accident throughout his remaining life. He has also relied ***R.D. Hattangadi v. M/s. Pest Control (India) Pvt. Ltd. And others AIR (1995 Supreme Court 755)*** in support of his submissions that pecuniary and non-pecuniary damages are to be assessed under different heads. The Tribunal is required to fix the amount of compensation some time on guess work and also on hypothetical

consideration, sympathy and the nature of the disability. In paragraphs 9, 12, the Supreme Court in the said case has held as follows:-

“Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which is capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include: (i) damage for mental and physical shock, pain suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e. on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.

In its very nature whenever a Tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guess work some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards.”

14. The Supreme Court in ***Divisional Controller, KSRTC v. Mahadeva Shetty and another (2003) 7 Supreme Court Cases 197***

has held that the Tribunal is required to make an award determining the amount of compensation which to it appears to be “just”. But at the same time it has to be borne in mind that compensation is not expected to be a windfall for the victim, compensation must be “just” and it cannot be a bonanza, not a source of profit but the same should not be a pittance. The courts and tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be “just” compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Though by use of expression “which appears to it to be just”, a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression “just” denotes equitability, fairness and reasonableness and non-arbitrariness.

15. The Tribunal has awarded the compensation to the appellant as follows:-

(i)	Conveyance charges	=	Rs. 27,000/-
(ii)	Attendant charges	=	Rs .50,000/-
(iii)	Medical expenses	=	Rs. 1,00,330/-
(iv)	Pain and suffering	=	Rs. 20,000/-
(v)	Diminishing of future Prospects	=	Rs. 8,02,670/-
Total compensation awarded		=	Rs. 10,00,000/-

The Tribunal in the impugned award has not given supporting reasons in awarding various amounts under different heads.

16. The learned counsel for the appellant has submitted that the Tribunal has awarded Rs.27, 000/- for conveyance charges whereas appellant will have to spend Rs.50,000/- ,for rest of his life for travelling to Shimla and Chandigarh for check up. He thus claims Rs.1,50,000/- under this head. The case of the appellant is that he is 100% paraplegic and confined to bed, his disability is permanent. It has not been shown what future medical treatment is required for the appellant at Shimla or Chandigarh. But keeping in view the condition of appellant, I am of the view that he will be required to visit doctors in future also in connection with his disability, therefore, in my opinion additional amount of Rs.15,000/- for future transportation is just and therefore, appellant is awarded additional amount of Rs.15,000/- for future conveyance/transport charges.

17. A submission has been made on behalf of the appellant that appellant is entitled to Rs.7,00,000/- on account of attendant charges whereas the Tribunal has awarded Rs.50,000/- . PW-2 Naresh Kumar has stated that he was employed by appellant for the last eight months for serving him at the rate of Rs.3000/- per month along with food. He has stated that another person Pankaj has been employed by appellant. But appellant has not named these persons nor he has stated about their salaries, terms and conditions of their employment. In any case the Tribunal has awarded Rs.50,000/- on account of attendant charges, Naresh Kumar has stated that some time appellant pays him in cash and some time through cheque . No evidence of payment through cheques

has been proved. In absence of proof , it is not possible to assess the amount for attendant charges as claimed by the appellant, but since the Tribunal has awarded for employing attendant and keeping in view the fact that appellant is 100% paraplegic, in normal course through out his life he will be requiring some help. In my opinion another sum of Rs.50,000/- for future attendant is just and proper. Therefore, additional amount of Rs.50,000/- is awarded to the appellant for future attendant.

18. The appellant has claimed Rs.3,00,000/- on account of medical expenses. The appellant has been awarded Rs.1,00,330/- on account of medical expenses. It has not been pointed out what type of future medical help is now required to the appellant nor there is worth believing evidence to this effect on record. It has not been shown that appellant in fact has purchased fowler's bed , electric wheel chair or he is in process of purchasing these items. The appellant has suffered 100% disability and is bed ridden. Therefore though there is no evidence for expected medical expenses in future on appellant but in my opinion appellant till he is alive will be requiring some medical expenses in future also. Therefore keeping in view the facts and circumstances of the case, I award total past and future medical expenses amounting to Rs.1,50,000/- to appellant.

19. It has been submitted that appellant was earning Rs.1,80,000/- from profession and Rs.3,00,000/- from orchards. In support of income from orchards the appellant has placed nothing on record to show that he is owner of land having orchards. On the contrary it is the case of the appellant that the father of the appellant was owner of the land with orchards which he bequeathed to his grand children and his

father died in the year 1986. The appellant has failed to prove any income from orchards owned by him, hence he is not entitled to any compensation on this ground. The appellant except for his own statement that he was earning Rs.15,000/- per month from profession has placed nothing on record to substantiate this fact. He has not placed on record income tax return or case diaries or other material to show that in fact the appellant was having professional income Rs.15,000/- per month. The case of the appellant is that he was conducting Court cases as an advocate at Anni, Rampur and Shimla since 1979, which fact is not sufficient to come to the conclusion that he was earning Rs.15,000/- income from profession. It has come on record that the appellant was engaged in other activities also. It is known fact that a professional advocate is required to maintain office, clerk and he purchases books for library. The appellant has placed nothing on record as corroborating evidence to assess his professional income. The appellant was 51 years of age at the time of the accident, therefore, no enhancement can be made in the amount of compensation of Rs.8,02,670/- awarded to the appellant by the Tribunal on account of diminishing of future prospects.

20. The Tribunal has awarded Rs.20,000/- to the appellant on account of pain and suffering. It has been proved on record that appellant has suffered 100% permanent disability and is paraplegic. The married life of appellant has come to an end. The appellant will have to remain under this condition through out his life. The appellant is bed ridden. In ***R.D. Hattangadi*** case (supra) the Supreme Court where the claimant was 51 years of age and an advocate and was bed ridden has

awarded a sum of Rs.50,000/- on account of pain and suffering and another amount of Rs.1,50,000/- on account of loss of amenities of life. In my opinion the appellant instead of Rs.20,000/- under the head pain and suffering is entitled to Rs.50,000/- for pain and suffering and another Rs.1,50,000/- for loss of amenities of life. Thus the appellant is entitled to following amounts:-

(i)	Conveyance charges (past and future)	=	Rs.	42,000/-
(ii)	Attendant charges (past and future)	=	Rs	1,00,000/-
(iii)	Medical expenses (past and future)	=	Rs.	1,50,000/-
(iv)	Pain and suffering and loss of amenities of life	=	Rs.	2,00,000/-
(v)	Diminishing of future Prospects	=	Rs.	8,02,670/-
Total compensation awarded		=	Rs.12,94,670/-	

The appellant is thus entitled to Rs.12,94,670/-on account of compensation. The car No.HP-35-0069 was insured with respondent No.3 vide policy Ex.RB at the time of accident, therefore, the respondent No.3 shall be liable to pay entire compensation amount to the appellant. On compensation of Rs.12,94,670/- the appellant is entitled and respondent No.3 is liable to pay interest at the rate of 9% per annum from the date of filing of the petition i.e.10.5.2002 till payment. The impugned award is thus liable to be modified accordingly.

21. The result of the above discussion, the appeal is allowed. The award dated 31.7.2003 passed by learned Motor Accident Claims Tribunal, Kinnaur, Civil Division at Rampur Bushahr in MAC case

No.25/02 is modified. An award of Rs.12,94,670/- is passed in favour of the appellant and against the respondents and since car No.HP-35-0069 was insured with respondent No.3, therefore, respondent No.3 shall pay the entire compensation amount to the appellant along with interest at the rate of 9% per annum from the date of filing of the claim petition i.e. 10.5.2002 till payment. No costs.

(Kuldip Singh)
Judge

November 13,2007
(sks)